

Passed by both Houses



New South Wales

Home Building Amendment (Warranties and Insurance) Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Home Building Amendment (Warranties and Insurance) Bill 2010

Act No , 2010

An Act to amend the *Home Building Act 1989* with respect to entitlements to the benefits of statutory warranties and insurance; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Home Building Amendment (Warranties and Insurance) Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Home Building Act 1989 No 147

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

non-contracting owner, in relation to a contract to do residential building work on land, means an individual, partnership or corporation that is the owner of the land but is not a party to the contract and includes any successor in title to the owner.

owner of land means the only person who, or each person who jointly or severally, at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession, or
- (b) is entitled to receive, or receives, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

[2] Section 18D Extension of statutory warranties

Insert after section 18D (1):

- (1A) A person who is a non-contracting owner in relation to a contract to do residential building work on land is entitled (and is taken to have always been entitled) to the same rights as those that a party to the contract has in respect of a statutory warranty.
- (1B) Subject to the regulations, a party to a contract has no right to enforce a statutory warranty in proceedings in relation to a deficiency in work or materials if the warranty has already been enforced in relation to that particular deficiency by a non-contracting owner.

[3] Section 18D (2)

Omit the subsection. Insert instead:

- (2) This section does not give a successor in title or non-contracting owner of land any right to enforce a statutory warranty in proceedings in relation to a deficiency in work or materials if the warranty has already been enforced in relation to that particular deficiency, except as provided by the regulations.

[4] Section 92C

Insert after section 92B:

92C Operation of contract of insurance in relation to non-contracting owners

- (1) If the holder of a contractor licence enters into a contract to do residential building work on land and a contract of insurance that complies with this Act is in force in relation to that work, the benefit of the contract of insurance is taken to extend (and to have always extended) to any non-contracting owner in relation to the land at the time the contract to do residential building work was entered into as if the non-contracting owner were a person on whose behalf the work is done.
- (2) Subsection (1) applies irrespective of whether or not the contract of insurance concerned contains a term to the same effect as that subsection.

[5] Section 99 Requirements for insurance for residential building work

Insert after section 99 (2):

- (2A) A provision of a contract of insurance providing cover for the benefit of a person on whose behalf work is done on land is to be read as providing (and to have always provided) for the same benefit in relation to a non-contracting owner of the land.
- (2B) Subsection (2A) applies irrespective of whether or not the contract of insurance concerned contains a term to the same effect as that subsection.

[6] Section 101 Requirements for insurance by owner-builders and others

Insert at the end of the section:

- (2) In this section:
contractor means a person doing residential building work otherwise than under a contract to whom section 96 applies.

[7] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Home Building Amendment (Warranties and Insurance) Act 2010

[8] **Schedule 4**

Insert at the end of the Schedule:

**Part 18 Provisions consequent on Home Building
Amendment (Warranties and Insurance)
Act 2010**

99 Interpretation

(1) In this Part:

amending Act means the *Home Building Amendment (Warranties and Insurance) Act 2010*.

interim period means the period commencing on 17 May 2010 (the date of the decision in the relevant judgment) and ending on the commencement of the amending Act.

relevant judgment means the decision of the New South Wales Court of Appeal in *Ace Woollahra Pty Ltd v The Owners—Strata Plan 61424 & Anor* [2010] NSWCA 101.

(2) For the purposes of this Part, proceedings are not *finally determined* if:

- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
- (b) any appeal in respect of the proceedings is pending (whether or not an appeal is brought as of right).

100 Application of Part

- (1) This Part prevails to the extent of any inconsistency with any other provision of this Schedule.
- (2) Regulations made under clause 2 of this Schedule may have effect despite any provision of this Part.

101 Relevant judgment and certain other proceedings unaffected

The amendments made by the amending Act do not extend to or otherwise affect:

- (a) the relevant judgement, or
- (b) subject to clause 102 (3), any proceedings before a court or tribunal that are finally determined, or

- (c) a decision of an insurer or the Building Insurers' Guarantee Corporation made before the commencement of the amendments that cannot be the subject of an appeal because of clause 65 of the *Home Building Regulation 2004*.

102 Statutory warranties

- (1) Section 18D (as amended by the amending Act) extends to a breach of a statutory warranty in relation to residential building work done on land owned by a non-contracting owner under a contract entered into before the commencement of the amending Act.
- (2) A non-contracting owner in relation to a contract to do residential building work on land who is entitled, on and after the commencement of the amending Act, to the benefit of a statutory warranty in relation to work done on the land may enforce the statutory warranty:
 - (a) subject to subclause (3), in proceedings commenced in accordance with Part 2C on or after the commencement of the amending Act, or
 - (b) in proceedings commenced by the non-contracting owner, but not finally determined, before the commencement of the amending Act to enforce the same statutory warranty.
- (3) A non-contracting owner in relation to a contract to do residential building work on land who:
 - (a) is entitled to the benefit of a statutory warranty under section 18D in relation to a particular deficiency in work done on the land, and
 - (b) was found, in proceedings under Part 2C that were finally determined during the interim period, not to be entitled to enforce the same statutory warranty for that particular deficiency solely because the owner was not a party to the contract,may enforce the same statutory warranty in proceedings subsequent to the earlier unsuccessful proceedings that are brought within 6 weeks after the commencement of the amending Act.
- (4) Nothing in this clause authorises or permits a non-contracting owner who was a party in proceedings the subject of the relevant judgment to bring subsequent proceedings under subclause (3).

103 Application of amendments to existing insurance policies and claims and proceedings

- (1) Subject to the regulations, the amendments made by the amending Act extend to any:
 - (a) contract of insurance entered into before the commencement of the amendments (despite any provision of the contract) (an *existing contract*), and
 - (b) proceedings on a claim under an existing contract commenced but not finally determined before the commencement of the amendments.
- (2) Any payment purporting to be made under Part 6 of this Act to a non-contracting owner under an existing contract or to a beneficiary under an indemnity provided under section 103I (1) before the commencement of the amendments made by the amending Act is taken to have been validly made if it could validly have been made if those amendments were then in force.
- (3) This clause applies only to contracts of insurance entered into on or after 1 May 1997.